

Application No.: 10/634,498
Filing Date: August 5, 2003

REMARKS

Claims 32, 48, 53 and 72 are amended herein as presented above. New Claims 78 – 81 are added herein. Claims 32 – 81 are pending in this application.

Rejections Under 35 USC § 102

The Office Action rejects Claims 53, 54, 58, 59 and 66 – 68 under 35 USC § 102(b) citing U.S. Patent No. 4,888,012 to Horn. Applicant respectfully traverses each of these rejections.

Regarding Independent Claim 53

Claim 53 is amended herein to recite *inter alia* “an optic disposed about an axis, the optic being biased to a dis-accommodated state **in the absence of any force,**” (emphasis added). As discussed with the Examiner during the interview the optic of Horn is not biased to a dis-accommodated state in the absence of any force. Accordingly, independent Claim 53 is not anticipated by Horn. Thus, Applicant respectfully requests the Examiner to withdraw rejections to Claim 53.

Regarding Dependent Claims 54, 58, 59, and 66 – 68

Claims 54, 58, 59 and 66 – 68 depend from independent Claim 53 and includes all the features recited by the independent Claim 53. As discussed above, the amended Claim 53 is not anticipated by Horn. Accordingly, Claims 54, 58, 59 and 66 – 68 are also not anticipated by Horn.

Rejections Under 35 USC § 103

The Office Action rejects Claims 32, 33, 35, 36, 38 – 52, 56, 57, 60 – 65, and 69 – 72 under 35 USC § 103(a) citing U.S. Patent No. 4,888,012 to Horn in view of U.S Patent No. 6,749,634 to Hanna and in further view of U.S. Publication No. 2003/0074060 to Zadni-Azizi and U.S. Patent No. 7,097,660 to Portney. Applicant respectfully traverses each of these rejections.

Regarding Independent Claims 32, 48 and 72

Claim 32 is amended herein to recite *inter alia* an “an optic, the optic disposed about an optical axis and including an anterior surface and a posterior surface, the optic configured to be biased to be in an un-accommodated state **in the absence of any force**” (emphasis added). Claim 48 is amended to recite *inter alia* “an optic biased into an un-accommodated state **in the absence of any force;**” (emphasis added) and Claim 72 is amended herein to recite *inter alia* an “optic disposed about an optical axis and biased to be in a dis-accommodated state **in the absence of any force**” (emphasis added).

As discussed above and with the Examiner during the interview, the optic of Horn is not biased to be in a dis-accommodated state in the absence of any force. Moreover, Hanna does not overcome the deficiencies of Horn. Accordingly, independent Claims 32, 48 and 72 are patentable over Horn in view of Hanna. Thus, Applicant respectfully requests the Examiner to withdraw rejections to Claims 32, 48 and 72.

With reference to Claim 72, the Office Action acknowledges that since the lens haptics of Horn are tensioned in the unaccommodated state, it does not provide a pushing or compressive force on the lens during accommodation (compression force from the ciliary muscles). See, the Office Action on page 5.

However, the Office Action states that each of Portney and Zadno-Azizi teach accommodating IOLs wherein the at-rest state of the lens is unaccommodated and the haptics directly translate a compressive force to cause accommodation and alleges that it would have obvious to one of ordinary skill in the art at the time of the invention to modify the IOL of Horn in view of Hanna such that the optic and haptics are biased to an unaccommodated state and utilize relatively rigid haptic members to translate the compressive forces of the ciliary muscle to achieve accommodation. See, the Office Action in pages 5 and 6.

Applicant respectfully submits that contrary to the allegations made by the Office Action, a person having ordinary skill in the art would have **no** apparent reason to modify the IOL of Horn in view of Hanna according to the teachings of Portney and/or Zadno-Azizi as proposed by the Office Action for at least the reasons discussed below.

Regarding the Zadno-Azizi Reference

Zadno-Azizi discloses an accommodating intraocular lens for implantation in an eye having an optical axis. “The lens comprises an anterior portion which in turn comprises an anterior viewing element and an anterior biasing element. The lens further comprises a posterior portion which in turn comprises a posterior viewing element in spaced relationship to the anterior viewing element and a posterior biasing element. The anterior portion and posterior portion meet at first and second apices of the intraocular lens. *The anterior portion and the posterior portion and/or the apices are responsive to force thereon to cause the separation between the viewing elements* to” provide accommodation. See, abstract of Zadno-Azizi (emphasis added).

Zadno-Azizi does not disclose or even remotely suggest an IOL “wherein ... accommodation is produced by a change in optic power due to a change in the shape of the optic from the first optic shape to the second optic shape as the arms of the positioning member push radially inward toward the optic,” (emphasis added) as recited by Claim 72.

Thus a person having ordinary skill in the art would have no apparent reason to combine the features disclosed by Zadno-Azizi with the IOL of Horn which provides accommodation by causing a change in the power of the optic by changing the shape of the optic.

Furthermore, in Figures 38C – D (reproduced below) and ¶ [0209] referred to by the Office Action, Zadno-Azizi discloses biasers 1000 which may be used to bias the lens system 100 toward the accommodated or unaccommodated state depending on the desired operating characteristics of the lens system.

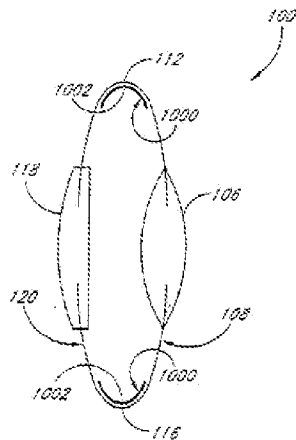


FIG. 38C

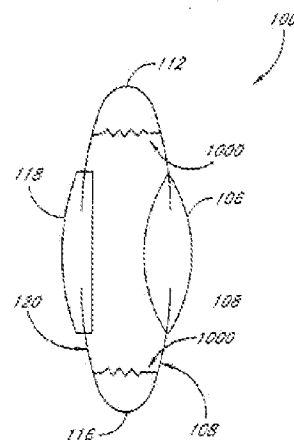
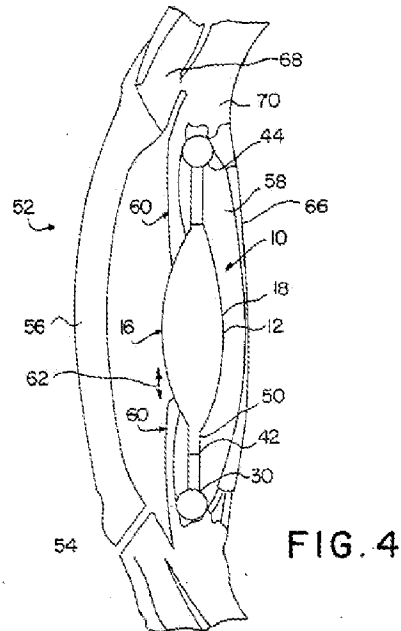


FIG. 38D

Neither the cited references nor the Office Action provide any guidance as to how a person having ordinary skill in the art would provide the biasers 1000, which are disposed adjacent the apices 112, 116 of the lens system 100 and between the two viewing elements 118 and 116, in the IOL of Horn which is illustrated below and has only one optic.



Applicant submits that the conclusion of the Office Action with respect to Zadno-Azizi is impermissible hindsight reconstruction based solely on the disclosure of the present application.

Regarding the Portney Reference

The Office Action refers to Figure 18, col.2: 60 – 66 and col. 11 of Portney. In Figure 18 (reproduced below) Portney discloses an intraocular lens where in response to compressive forces from ciliary body 58, dynamic haptic 328 acts on spring coil 332 to compress it from its non-accommodating, unstressed condition to its smaller diameter stressed, accommodating state, thereby decreasing the coil diameter and applying a compressive, accommodating stress, through flexible rim or portion 334 of static haptic 330, to dynamic lens 326. When ciliary muscle 60 relaxes, the compressive force from ciliary body 58 on dynamic haptic 328 is reduced permitting spring coil 332 to expand to its normal, unstressed state, thereby permitting dynamic lens 326 and static haptic rim 334 to elastically return to their flatter, non-accommodating condition.

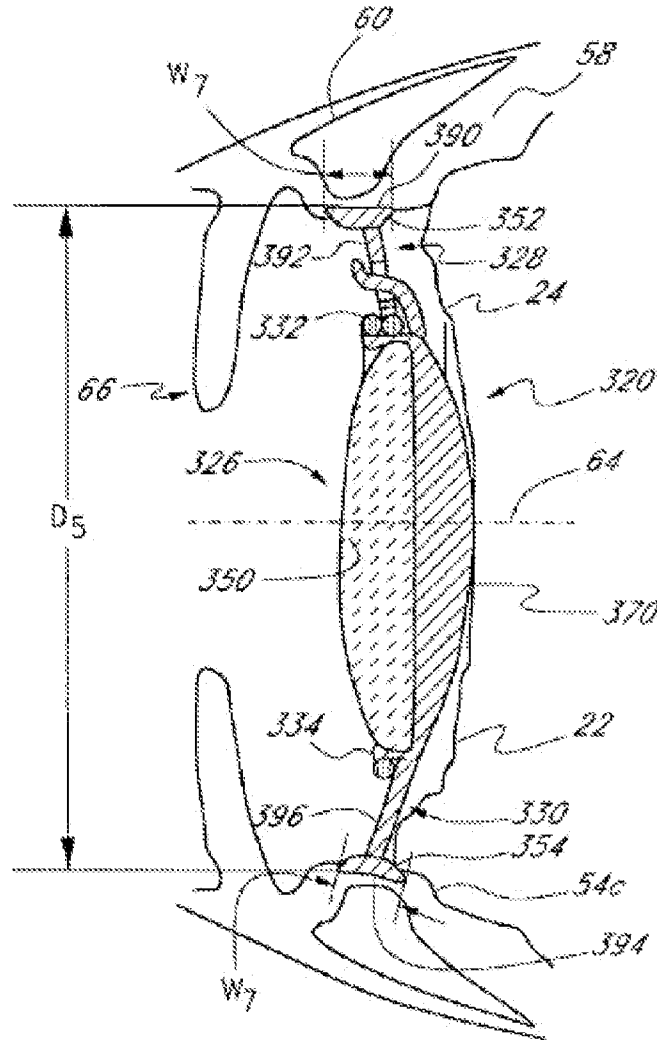


FIG. 18

It is apparent from the above disclosure that Portney provides accommodation by applying or removing a compressive force on the optic, whereas Horn provides accommodation by applying or removing a stretching force on the optic. Since the direction of the applied force in the IOL disclosed by Portney is opposite to the direction of the applied force in the IOL disclosed by Horn, it would not be obvious to a person having ordinary skill in the art to combine the teachings of Portney with the teachings of Horn.

In view of the above discussion, Applicant submits that the Office Action has not establish a *prima facie* case of obviousness over the cited references and requests the Examiner to withdraw the rejections to Claims 32, 48 and 72.

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On page 6, the Office Action states that “even further, should the applicant show that the limitations of claims 53, 54, 58, 59 and 66 – 68 somehow overcome the purported anticipation in view of Horn’s unaccommodated state, Examiner maintains claims 53 – 54, 58, 59 and 66 – 68 would alternatively be obvious in view of the teachings in Zadno-Azizi and Portney as set forth in this paragraph.”

Applicant submits that Claims 53 – 54, 58, 59 and 66 – 68 would not be obvious in view of the teachings in Zadno-Azizi and Portney for at least the reasons set forth above.

Regarding Dependent Claims 33, 35, 36, 38 – 52, 56 – 57, 60 – 65, 69 – 71 and 73 - 77

Claims 33, 35, 36, 38 – 47, 49 – 52, 56 – 57, 60 – 65, 69 – 71 and 73 – 77 depend from one of the independent Claims 32, 48, 53 and 72 and include all the features recited by the independent claim they depend from. As discussed above, the amended independent Claims 32, 48, 53 and 72 are patentable over Horn, Hanna, Zadno-Azizi and Portney either alone or in combination. Accordingly, Claims 33, 35, 36, 38 – 47, 49 – 52, 56 – 57, 60 – 65, 69 – 71 and 73 – 77 are also patentable over Horn, Hanna, Zadno-Azizi and Portney.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Final Office Action are inapplicable to the present claims. Accordingly, issuance of a Notice of Allowance is most earnestly solicited.

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Applicant respectfully traverses each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Any arguments in support of patentability and based on a portion of a claim should not be taken as founding patentability solely on the portion in question; rather, it is the combination of features or acts recited in a claim which distinguishes it over the prior art.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney, Andrew M. Douglas at (949) 721-7623 to resolve such issue(s) promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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